IN THE HIGH COURT OF UTARANCHAL AT NAINITAL.

Writ petition No. 4823 (M/S) 2001
(Old No. 24240 of 1992)

O.P. Handa S/o Sri A.N. Handa ---- Petitioner

Vs.

Smt. Usha Malhan W/o Ramesh Chand Malhan,
and ---- Respondents.

Hon'ble P.C.Verma,J.

By means of this writ petition, the petitioner has challenged the judgment and order dated 15.06.1992 passed by learned III Addl. District Judge, Dehradun, in Rent control Appeal No. 41 of 1989 Smt. Usha Malhan Vs. Sri O.P. Handa.

The respondent's wife is landlady of the building in question who moved an application under Section 21 (1) (a) of U.P. Urban building (Regulation of letting rent and Eviction) Act, 1972 (hereinafter referred to as the Act) before the Prescribed Authority/ Civil Judge, Dehradun. After receipt of the objection and evidence led by the parties, the Prescribed Authority rejected the application holding that a house was constructed prior to 1982 in the name of Smt. Urmila Handa- wife of Sri O.P. Handa (petitioner) and was partitioned between the sons of the petitioner. Since the construction was raised prior to the moving of the application under Section 21 (1) (a) of the Act, therefore, the Prescribed Authority proceed to examine the need and comparative hardship ignoring the protection given under explanation (1) to sub Section-1 of Section-21 of the Act. After examining the evidence led by the parties and after hearing learned counsel for both the parties, application for release of the building was rejected.

Aggrieved by the rejection order, the landlady Smt. Usha Malhan filed an appeal. The learned III Addl. District Judge, by his impugned judgment, allowed the appeal holding that no objection can be entertained raised by the tenant (petitioner in the present petition).

Heard Sri Rajendra Dobhal and Sri Narain Dutt, learned counsel for the petitioner and Sri Gopal Narain, learned counsel for the respondent and perused the entire evidence on record.

Admittedly, there is no dispute that the house No. 100/8 Naisi Villa Road, Dehradun was constructed over the land which was in the name of Smt. Urmila Handa. The house was constructed by the family members of the petitioner prior to 1982 (although some portion of it was constructed in 1971-72, 75-76 and 79-80). The assessment of the disputed building was done by the Municipal Board, Dehradun in the year 1982. The petitioner is a tenant in the residential building in question from 1957.

In view of the above undisputed fact, it is clear that during the course of tenancy of the petitioner, a land was purchased in the name of the wife of the petitioner and construction of the building was started in the year 1971-72 and after its completion, the assessment was done by the Municipal Board in the year 1982. Therefore, it is apparent from the record that the family members of the petitioner have constructed accommodation in the same Municipal area, after enforcement of U.P. Act No. 13 of 1972. Thus, the learned District Judge was right in holding that in view of the Explanation-1 of Section 21(1) of the Act, no objection could be entertained and has rightly allowed the application of the appellant for release of the disputed building.

Learned counsel for the petitioner placed reliance on the judgment of the **Apex Court in Civil Appeal N0 7588 of 1999 Abdul Sattar Vs. Khutejabi and others (2003) 5 SCC, page 647**. In that case the tenant's family consisted of his wife and four sons, who have all been residing in the suit premises jointly with the tenant as members of his family. In the year 1984, a house came to be allotted by the Housing Board to one of the sons of the tenant, namely, Mohammed Ismail. Mohammed Gouse, the tenant, died in the year 1988 and the tenancy rights devolved upon the widow and the four sons including the son in whose name the house from the Housing Board had stood allotted in the year 1984. In the year 1990, the

landlord initiated proceedings for eviction of the tenants (the five heirs of late Mohammed Gouse) on the ground that one of the tenants has been allotted a building suitable for their residence. The Apex Court after considering the definition of tenant given in Clause-r of Section 3 of Karnataka Rent Control Act, 1961 held that the son, who left the tenancy during the lifetime of the father, was not a tenant within the meaning of tenant, defined in the said Act, 1961 of Karanataka Rent Control. Therefore, protection of tenant was not available to other tenants under Section 21 of the Act. Here in the instant case, undisputedly, the land was purchased in the name of the wife of the petitioner and house was constructed over the land and the same house was assessed by the Municipal Board in the name of the wife of the petitioner.

The U.P. Act No. 13 of 1972 defines the family as under:-

(g) “family” in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,

(ii) male lineal descendants,

(iii) such parents grand-parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of male lineal descendant, as may have been normally residing with him or her,

and includes, in relation to a landlord, any female having a legal right of residence in that building;

The family in relation to tenants means his or her spouse. Thus, the wife of the petitioner is within the meaning of the family and Explanation-1 of Section 21 of the Act provides that in the case of residential building where the tenant or any member of his family, who has been normally residing with or is wholly dependant on him, has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, no objection by the tenant against the application under Section 21 of the Act shall be entertained. The appellate court has recorded a finding of facts that a land was purchased in the name of the wife of the petitioner who is

fully dependent on the petitioner's family and is a member of his family. Therefore, Explanation-1 of Section-21 of the Act is attracted with its fully force. The impugned judgment passed by the Appellate Court does not suffer from any illegality or infirmity and is liable to be dismissed.

Accordingly, the petition is devoid of merits and is hereby dismissed. No order as to costs.

(P.C. Verma, J.)

October 15, 2003:

NCM: